



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

AUG 17 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven A. Herman
Beveridge & Diamond, P.C.
1350 I Street, N.W. Suite 700
Washington, D.C. 20005-3311

Dear Mr. Herman:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation to your client, Silgan Holdings, Inc. (Silgan), under Section 113(a)(1) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1). Pursuant to EPA's Audit Policy, "Incentives for Self Policing: Discovery, Disclosure, Correction and Prevention of Violations," Silgan advised EPA in March 2002 that it had discovered that several of its facilities, including its Menomonee Falls, Wisconsin facility, were in violation of the Prevention of Significant Deterioration and/or Nonattainment New Source Review (NSR) provisions of the Act, as well as other Act requirements. Based on its review of the self disclosures provided by Silgan and further investigation, EPA finds that Silgan violated the NSR provisions of the Wisconsin State Implementation Plan at its Menomonee Falls, Wisconsin facility by modifying the can welding line at the facility in 1994 without first obtaining the required construction permit; failing to obtain, prior to the modification, the required offsets; and failing to apply the lowest achievable emissions rate.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton".

Cheryl L. Newton
Director

Air and Radiation Division

Enclosure

cc: Peter Moore
Office of Civil Enforcement

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:		
Silgan Holdings, Inc.)	NOTICE OF VIOLATION
Menomonee Falls, Wisconsin)	
)	EPA-5-09-WI-13
Proceedings Pursuant to Section 113(a)(1))	
of the Clean Air Act, 42 U.S.C.)	
§ 7413(a)(1))	

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency finds that Silgan Holdings, Inc. (Silgan) was violating the Wisconsin State Implementation Plan (SIP) at its Menomonee Falls, Wisconsin, facility, as follows:

Statutory and Regulatory Authority

- 1) The Clean Air Act (the Act) is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).
- 2) Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which in the ambient air results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.
- 3) Pursuant to Sections 108 and 109 of the Act, 42 U.S.C. §§ 7408 and 7409, EPA has identified ozone as a criteria pollutant, and has promulgated NAAQS for this pollutant at 40 C.F.R. §§ 50.9, 50.10, and 50.15.
- 4) Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each State is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to that pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to that pollutant.

- 5) On March 3, 1978, EPA designated Waukesha County, Wisconsin as a primary nonattainment area for the NAAQS for ozone. 43 Fed. Reg. 8962 (March 3, 1978).
- 6) On November 6, 1991, EPA redesignated Waukesha County, Wisconsin as a severe nonattainment area for the NAAQS for ozone, effective January 6, 1992. 56 Fed. Reg. 56694 (November 6, 1991).
- 7) Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review (NSR) requirements for areas designated as being in nonattainment with the NAAQS standards. These provisions are referred to herein as the "Nonattainment NSR" program. The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Amendments of the Act, P. Law 101-549, effective November 15, 1990, the Nonattainment NSR provisions were set forth at 42 U.S.C. §§ 7501-7508.
- 8) Under Section 172(c)(5) of the Nonattainment NSR provisions of the Act, 42 U.S.C. § 7502(c)(5), each State is required to adopt Nonattainment NSR SIP rules that include provisions to require permits that conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503, for the construction and operation of modified major stationary sources within nonattainment areas. Section 173 of the Act, in turn, sets forth a series of minimum requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.
- 9) Section 173(a) of the Act, 42 U.S.C. § 7503(a), provides that construction and operating permits may be issued if, *inter alia*:
 - (a) sufficient offsetting emissions reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the NAAQS is maintained; and (b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate" (LAER).
- 10) On April 17, 1981, EPA approved Chapter 144 of the Wisconsin Statutes as part of the federally enforceable NSR portion of the Wisconsin SIP, effective April 17, 1981. 46 Fed. Reg. 22374 (April 17, 1981).
- 11) Section 144.391(1)(b) states that after July 29, 1979, no person may construct a new stationary source or commence modification of an existing source if that source is a nonattainment area major source unless the person has a permit from the department.
- 12) Section 144.30(20) defines "modification" as any changes in the physical size or method of operation of a stationary source which increases the potential amount of emissions of an air contaminant or which results in the emission of an air contaminant not previously emitted or which results in the violation of an ambient air increment.

- 13) Section 144.30(23) defines “stationary source” as an air contaminant source which directly or indirectly is capable of emitting an air contaminant only from a fixed location. A stationary source includes an air contaminant source which is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant.
- 14) Section 144.30(2) defines “air contaminant source” as any facility, building, structure, installation, equipment, vehicle, or action that emits or may emit an air contaminant directly, indirectly, or in combination with another facility, building, structure, installation, equipment, vehicle, or action.
- 15) Section 144.391(1) states that a stationary source is a nonattainment area major source if a) the source is located in a nonattainment area or may affect significantly the air quality in a nonattainment area; and b) the source, without considering air pollution control equipment, is capable of emitting an air contaminant for which the area is classified as a nonattainment area in the following amounts: one hundred tons per year (tpy) or more of sulfur oxides, particulate matter, carbon monoxide, nitrogen oxides, or volatile organic compounds (VOCs).
- 16) Section 144.393(2) allows the department to approve the application for a nonattainment area mandatory major source permit if the department finds the source meets the requirements under sub. (1) and it finds: a) reasonable further progress; b) the emissions from the source will be at LAER; and c) the applicant’s other major sources meet or are on schedule to meet the requirements of ss 144.30 to 144.426 and the rules promulgated under those sections.
- 17) Section 144.393(1) allows the department to approve the application for a nonattainment area mandatory major source permit if it finds that: a) the source will meet all applicable emission limitations; b) the source will not violate or exacerbate a violation of an air quality standard or ambient air increment, if the source is operating under an emission reduction option; c) the required permit applications for other sources participating in that emission reduction option are approvable; d) and the source will not degrade the air quality in an area sufficiently to prevent the construction, modification, or operation of another source.
- 18) Section 144.30(15) defines “LAER” as the rate of emissions which reflects the more stringent of the following: a) the most stringent emission limitation which is contained in the air pollution regulatory program of any State for this class or category of source, unless an applicant for a permit demonstrates that these limitations are not achievable; or b) the most stringent emission limitation which is achieved in practice by the class or category of source.
- 19) On January 18, 1995, EPA approved NR 408 as part of the federally enforceable Wisconsin SIP, effective February 17, 1995. 60 Fed. Reg. 3538 (January 18, 1995).
- 20) NR 408.03(1) states that no person may begin actual construction of a major stationary source or major modification to which the requirements of NR 408 apply unless the person has a permit which states that the stationary source or modification will meet the requirements of ss. NR 408.04 to 408.11.

- 21) NR 408.01 states that NR 408 applies to all new major stationary sources and all major modifications to major sources located in areas designated as nonattainment areas.
- 22) NR 408.02(22)(a) defines “major modification” as any physical change in, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.
- 23) NR 408.02(23)(a) defines “major stationary source,” in part, as any stationary source of air pollutants which emits or has the potential to emit 25 tpy or more of VOC in any severe nonattainment area for ozone.
- 24) NR 408.02(34)(a) defines “significant,” in reference to a net emissions increase, as a rate of emissions that would equal or exceed 40 tpy of VOC.
- 25) NR 408.04(3) states that a major modification shall apply LAER for each pollutant subject to the requirements of NR 408 for which it would result in a significant net emissions increase at the source. This requirement applies to each emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit or units.
- 26) NR 408.06(2) states that prior to the issuance of a permit under NR 408, federally enforceable emissions offsets shall be obtained from the same source or other sources in the same nonattainment area or the emissions offsets may be obtained from a source in another nonattainment area if: a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and b) emissions from such other area contribute to a violation of a NAAQS in the nonattainment area in which the proposed new or modified source would be constructed.
- 27) NR 408.06(3) states that the total annual tonnage of emissions of any applicable air contaminant allowed from the proposed new source, or net emissions increase from the modification, shall be offset by an equal or greater reduction, as applicable, in the actual emissions of the air contaminant from the same or other sources.
- 28) 40 C.F.R. § 52.23 states that, among other things, failure to comply with any approved regulatory provision of a SIP, any permit condition, or with any permit limitation or condition contained within an operating permit, renders the person so failing to comply in violation of a requirement and subject to enforcement action under Section 113 of the Act.

Finding of Fact

- 29) Silgan owns and operates a metal can production facility located at N90 W14600 Commerce Drive, Menomonee Falls, Wisconsin.
- 30) In July 1994, Silgan upgraded a can welding line at the Menomonee Falls facility, increasing production from 24,900 cans per hour to 33,000 cans per hour, thereby increasing side seam-stripe usage and VOC emissions.

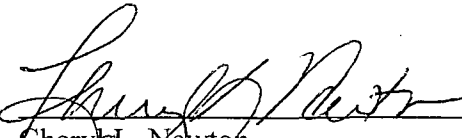
- 31) Based on review of information, EPA alleges that the July 1994 project was subject to NSR review at the time of commencement because it was a "major modification," as defined by the federally enforceable Wisconsin SIP.
- 32) During the July 1994 modification, the Menomonee Falls facility was located in an area classified as severe nonattainment for ozone.
- 33) During the July 1994 modification, the Menomonee Falls facility was a major source because it emitted or had the potential to emit 25 tpy of VOCs in a severe nonattainment area for ozone.
- 34) Silgan shut down the can welding line in 1995 after 13 months of operation.
- 35) Silgan did not apply for or receive a construction permit authorizing increased VOC emissions from the modified can welding line.

Violations

- 36) In 1994, Silgan violated Section 144.391(1)(b) of the Wisconsin SIP by modifying the can welding line at the Menomonee Falls facility without first obtaining the required construction permit.
- 37) Starting in 1994, Silgan violated Section 144.393, NR 408.03(1), NR 408.04(3), NR 408.06(2), and NR 408.06(3) of the Wisconsin SIP by modifying the can welding line at the Menomonee Falls facility without first obtaining the required offsets and attaining LAER.

8/14/09

Date



Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Tracy Jamison, certify that I sent a Notice of Violation, No. EPA-5-09-WI-13, by Certified Mail, Return Receipt Requested, to:

Steven A. Herman
Beveridge & Diamond, P.C.
1350 I Street, N.W. Suite 700
Washington, D.C. 20005-3311

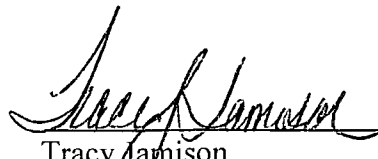
I also certify that I sent copies of the Notice of Violation by first class mail to:

Peter W. Moore, Esq.
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2248-A
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Daniel Schramm, Supervisor
Southeast Region Headquarters
Wisconsin Department of Natural Resources
2300 N. Dr. Martin Luther King Jr. Drive
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William Baumann, Chief-Compliance and Enforcement Section
Bureau of Air Management
Wisconsin Department of Natural Resources
101 S. Webster St.
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53707

on the 17 day of August, 2009.


Tracy Jamison,
Office Automation Clerk
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0187 5938